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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN W. SUSSMEIER, JOHN R. MASOTTA and
BORIS ROZENFELD

Appeal 2008-2967
Application 10/803,636
Technology Center 3700

Decided: September 23, 2008

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-2, 4-9, and 11-12. Claims 3 and 10 have been objected to as being dependent upon a rejected claim but indicated as being allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to an inserter input system for generating sheets of printed material which are to be collated and inserted into envelopes (Spec. 1:9-10). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. An inserter input system comprising:

a web feeder providing a web of printed material, the web feeder feeding the web in a first direction;

a web slitting device splitting the web along the first direction into at least two portions;

a transverse web cutter cutting the portions of split web transverse to the first direction while the web is transported through the web cutter to form side-by-side individual sheets, the individual sheets having a width in the transverse direction and a length in the first direction, the web cutter cutting sheets at a cutting rate;

a right angle turn mechanism downstream of the web cutter whereby the individual sheets are rearranged to be one on top of the other in a shingled arrangement, the right angle turn mechanism comprising a portion of a right angle turn transport transporting individual sheets at a first velocity, the first velocity being a function of the cutting rate multiplied by the width of the individual sheets; and

a high speed separation transport downstream of the right angle turn transport and pulling individual shingled sheets out from the shingled arrangement and whereby sheets are thereafter transported serially and separated by a predetermined gap.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Moser	US 5,439,208	Aug. 8, 1995
Ifkovits	US 6,443,447	Sep. 3, 2002

The following rejections are before us for review:

1. Claims 1-2, 4-9, and 11-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ifkovits and Moser.

THE ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting the claims 1-2, 4-9, and 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ifkovits and Moser. This issue turns on whether Ifkovits and Moser disclose individual sheets being transported at a first velocity which is a function of the cutting rate multiplied by the width of the individual sheets.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence¹:

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF1. Ifkovits discloses that the sheets 42, 44 are moved toward the turn-over modules at different speeds. The device includes a cutter 16. Sheet 42 is moved at a first speed and sheet 44 is moved a second speed which is greater than the first speed (col. 4:16-21).

FF2. Moser discloses a turnover sequencer staging apparatus.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). See also *KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

The Appellants argue that the rejection of claims 1-2, 4-9, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Ifkovits and Moser is improper because Ifkovits fails to disclose “a right angle turn transport

transporting individual sheets at a first velocity, the first velocity being a function of the cutting rate multiplied by the width of the individual sheets” as recited in claim 1 (Br. 10). The Appellants argue that Ifkovits provides no teaching of any sort of variable control (Br. 11) since the sheets are moved at a constant speed. The Appellants have also argued that the Ifkovits reference is silent to the sheet velocity at the right angle transport device (Reply Br. 3).

In contrast the Examiner has determined that Ifkovits does disclose the sheets being transported at a “first velocity capable of being a function of the cutting rate multiplied by the width of the individual sheets” (Ans. 3). The Examiner has determined that since in Ifkovits: the first velocity, width, and cutting rate are all known variables, that therefore a constant can always be incorporated into an equation relating to the velocity to equalize the equation (Ans. 4). The Examiner reiterates that it has been determined that since the claimed function has 3 variables (the first velocity, the width, and the cutting rate), inherently an equation connects all three variables for each individual sheet, and that a mathematical constant can be used in the equation to equalize it (Ans. 6).

We disagree with the Appellants. Claim 1 only requires “the first velocity being a function of the cutting rate multiplied by the width of the individual sheets.” Claim 1 does not require that multiple velocities be a function of the cutting rate and width, it only requires that a single “first velocity” do so. As noted by the Examiner a velocity equation for the sheets can have multiples or constants incorporated into the equation (Ans. 5) to meet the claimed functional relationship for the sheet first velocity since the claims do not exclude this. Ifkovits has disclosed a sheet accumulating

system with a cutter and sheets which move at a velocity (FF1). A measurable sheet velocity at the right angle transport device will inherently exist at which point the cutting rate and sheet width can also be measured. A mathematical function could be used to describe the sheet velocity as for example: $V_{\text{sheet}} = C_{\text{constant}}(CR_{\text{cutting rate}})(SW_{\text{sheet width}})$. The constant in the function could be determined by simply dividing the measured sheet velocity by the cutting rate and sheet width. Since the claims only require that the function exist for a single “first velocity” the claimed requirement has been disclosed by Ifkovits. For the reasons above we sustain the rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Ifkovits and Moser. The Appellants have not separately argued the rejection of claims 2, 4-9, 11 and 12 and the rejection of these claims is sustained for the reasons above as well.

CONCLUSIONS OF LAW

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 1-2, 4-9, and 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ifkovits and Moser.

DECISION

The Examiner’s rejection of claims 1-2, 4-9, and 11-12 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

Appeal 2008-2967
Application 10/803,636

JRG

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